



SUMMARY OF U.S. EPA'S ABILITY TO PAY POLICIES CASMALIA DISPOSAL SITE

The U.S. EPA's process for settling with parties for whom ability to pay is a significant consideration balances two public interests: ensuring that parties satisfy their environmental liability, and ensuring that the payment does not cause any party undue financial hardship. Undue financial hardship occurs if, in the Agency's opinion, payment of the full settlement amount would deprive a party of ordinary and necessary assets or cause a party to be unable to pay for ordinary and necessary business and/or living expenses.

The U.S. EPA will consider a party's ability to pay if the party requests such consideration, submits sufficient information to enable the Agency to determine the party's entire financial position and certifies to the truth and accuracy of such information. Settlements in which a party's ability to pay is taken into consideration should seek to resolve all financial issues associated with that party at the Site, but should not release the party from such obligations as providing information or access to the Site to assist in performing the cleanup. The settlement should be in addition to such resources as insurance policies, indemnification agreements or contribution claims which the party may have to contribute to the cleanup costs. Finally, the settlement terms apply only to the person or company that demonstrated financial hardship.

To determine a party's ability to pay a given settlement amount, the Agency generally evaluates the party's financial information for the past five years, using a two-phase analysis. First, the Agency looks at the party's "balance sheet" – assets and liabilities – calculating the amount of money available from excess cash, the sale of assets that are not ordinary and necessary, and the ability to borrow against assets or owners' equity. Then the Agency looks at the party's "operating cash flow" – income and expenses – estimating the amount of money available from five years of projected revenue in excess of projected ordinary and necessary expenses. If these sources are insufficient to fund payment of the full settlement amount in the year of the settlement, the Agency may reduce the settlement payment. Generally, the Agency will seek payment upon settlement. However, in some cases the Agency may consider payments over time. In such cases, EPA may require security for such payments, such as personal guarantees or liens and, after the first payment, future payments will include interest charges.

For additional information, refer to the following documents, available from the U.S. EPA:

1. "General Policy on Superfund Ability to Pay Determinations", Memorandum from Barry Breen, Director, Office of Site Remediation Enforcement, September 30, 1997. (<http://es.epa.gov/oeca/osre/970930-4.html>).
2. Fact Sheet: Existing Ability to Pay Guidance and Models, issued by EPA's Office of Site Remediation Enforcement, May 1995. (<http://es.epa.gov/oeca/osre/950500-1.html>).